



March 31, 2011

## **Summary of proposed rule provisions for Accountable Care Organizations under the Medicare Shared Savings Program**

### **Overview**

On March 31, 2011, the Centers for Medicare & Medicaid Services (CMS) proposed new rules under the ACA to help doctors, hospitals, and other health care providers better coordinate care for Medicare patients through Accountable Care Organizations (ACOs). ACOs create incentives for health care providers to work together to treat an individual patient across care settings – including doctor's offices, hospitals, and long-term care facilities. The Medicare Shared Savings Program will reward ACOs that lower growth in health care costs while meeting performance standards on quality of care and putting patients first. Patient and provider participation in an ACO is purely voluntary.

### **Background:**

The ACA requires the Secretary to establish the Shared Savings Program by January 1, 2012. This program is intended to encourage providers of services and suppliers (e.g., physicians, hospitals and others involved in patient care) to create a new type of health care entity that agrees to be held accountable for improving the health and experience of care for individuals and improving the health of populations while reducing the rate of growth in health care spending.

### **ACOs and the Medicare Beneficiary:**

An ACO provides an opportunity for Medicare beneficiaries to receive high quality evidence-based health care that eliminates waste and reduces excessive costs through improved care delivery; however, there would be significant differences between ACOs, as described in the proposed rule and the private managed care plans offered under the Medicare Advantage program. Beneficiaries would not enroll in a specific ACO. Instead the proposed rule calls for Medicare to take a retrospective look at the beneficiary's use of services to determine whether a particular ACO should be credited with improving care and reducing expenditures. This means that an ACO would have an incentive to improve the quality of care for all patients seen by its member providers and suppliers.

The proposed rule would require providers participating in an ACO to notify the beneficiary that they are participating in an ACO, and that the provider will be eligible for additional Medicare payments for improving the quality of care the beneficiary receives while reducing overall costs or may be financially responsible to Medicare for failing to

provide efficient, cost-effective care. The beneficiary may then choose to receive services from the provider or seek care from another provider that is not part of the ACO.

The proposed rule would also require each provider in an ACO to notify the beneficiary that the beneficiary's claims data may be shared with the ACO. This data sharing is intended to make it easier to coordinate the beneficiary's care; however, the provider may not require a beneficiary to obtain services from another provider or supplier in the same ACO. The provider must give the beneficiary the opportunity to opt-out of those data sharing arrangements. For Medicare beneficiaries who choose not to opt-out of the data sharing arrangements, the proposed rule would limit data sharing to the purposes of the Shared Savings Program and would require compliance with applicable privacy rules and regulations.

### **Proposed eligibility requirements for an ACO:**

Under the proposed rule, an ACO refers to a group of providers and suppliers of services (e.g., hospitals, physicians, and others involved in patient care) that will work together to coordinate care for the Medicare fee-for-service beneficiaries they serve. The goal of an ACO is to deliver seamless, high quality care for Medicare beneficiaries, instead of the fragmented care that has so often been part of fee-for-service health care. The ACO would be a patient-centered organization where the patient and providers are true partners in care decisions. The ACA specifies that an ACO may include the following types of groups of providers and suppliers of Medicare-covered services:

- ACO professionals (i.e., physicians and hospitals meeting the statutory definition) in group practice arrangements,
- Networks of individual practices of ACO professionals,
- Partnerships or joint ventures arrangements between hospitals and ACO professionals, or
- Hospitals employing ACO professionals,
- Other Medicare providers and suppliers as determined by the Secretary.

In the proposed rule, the Secretary has used her discretion to add certain critical access hospitals as eligible to participate in the Shared Savings Program. The statute also requires each ACO to establish a governing body representing ACO providers of services and suppliers, and Medicare beneficiaries. The proposed rule would make each ACO responsible for routine self-assessment, monitoring and reporting of the care it delivers.

To participate in the Shared Savings Program, the proposed rule would require an ACO to complete an application providing the information requested by CMS, including how the ACO plans to deliver high quality care at lower costs for the beneficiaries it serves. As proposed, the ACO must agree to accept responsibility for at least 5,000 beneficiaries. If the application is approved, the ACO must sign an agreement with CMS to participate in the Shared Savings Program for a period of three years. An ACO will *not* be automatically accepted into the Shared Savings Program.

The proposed rule outlines a monitoring plan that includes analyzing claims and specific financial and quality data as well as the quarterly and annual aggregated reports, performing site visits, and performing beneficiary surveys. Under the proposed rule, there are a number of circumstances under which CMS may terminate the agreement with an ACO, including avoidance of at risk beneficiaries and failure to meet the quality performance standards.

**Tying payment to improved care at lower cost:**

Under the proposed rule, Medicare would continue to pay individual providers and suppliers for specific items and services as it currently does under the fee-for-service payment systems. The proposed rule would require CMS to develop a benchmark for savings to be achieved by each ACO if the ACO is to receive shared savings, or be held liable for losses. Additionally, an ACO would be accountable for meeting or exceeding the quality performance standards to be eligible to receive any shared savings.

The proposed rule would establish quality performance measures and a methodology for linking quality and financial performance that will set a high bar on delivering coordinated and patient-centered care by ACOs, and emphasize continuous improvement around the three-part aim of better care for individuals, better health for populations, and lower growth in expenditures. The proposed rule would require the ACO to have in place procedures and processes to promote evidence-based medicine and beneficiary engagement in their care. The proposed rule would require ACOs to report quality measures to CMS and give timely feedback to providers. CMS expects that ACOs will invest continually in the workforce and in team-based care. To assure program transparency, the proposed rule would require ACOs to publicly report certain aspects of their performance and operations.

Under the proposed rule, an ACO that meets the program's quality performance standards would be eligible to receive a share of the savings it generates below a specific expenditure benchmark that would be set by CMS for each ACO. The proposed rule would also hold ACOs accountable for downside risk by requiring ACOs to repay Medicare for a portion of losses (expenditures above its benchmark). To provide an entry point for organizations with varied levels of experience with and willingness to take on risk, the proposed rule would allow an ACO to choose one of two program tracks. The first track would allow an ACO to operate on a shared savings only track for the first two years, but would then require the ACO to assume the risk for shared losses in the third year. The second track would allow ACOs to share in savings and risk liability for losses beginning in their first performance year, in return for a higher share of any savings it generates.